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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,163	02/27/2004	Haruo Kawashima	12010-0056	4596

22902 7590 02/14/2007
CLARK & BRODY
1090 VERMONT AVENUE, NW
SUITE 250
WASHINGTON, DC 20005

EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT	PAPER NUMBER
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3765

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/787,163	Applicant(s) KAWASHIMA ET AL.	
	Examiner Alissa J. Tompkins	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4,6-8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 10/03/06 has been received. Claims 1-3, 5, and 9 are still pending.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5 and 9 have been considered but are moot in view of the new ground(s) of rejection.

As for claim 10, applicant argues that claim 10 should not be withdrawn. However, claim 10 refers to the intermediate section being fixed in the lens. The species restriction of 12/06/2005 restricted between a first species (Figures 1 and 2) and a second species (Figures 3 and 4). The applicant elected Species 1. Claim 10 is shown in Figures 3 and 4 where the intermediate section is fixed onto the actual lens. Figures 1 and 2 show a belt-like assembly where the intermediate section is not fixed onto the lens but lies across it and is connected to the skirt portion of the goggle. Accordingly, claim 10 is withdrawn from consideration as being directed to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Yokota et al. (U.S. 7,165,837). Yokota discloses swimming goggles comprising a pair of lens assemblies. Each lens assembly includes an eye cup 2 having a skirt configured to be held in close contact with a user's face to form a seal to keep water out of a user's eye (Column 4, 50-53). A link 3 connects the lens assemblies to each other. A strap 4 is attached to both ends of the connected eye cups (Column 4, 26-27) and is configured to be worn around the head of the wearer. The lens assemblies have a transverse direction horizontally extending across said head and a longitudinal direction vertically extending orthogonally to the transverse direction and the lens included in each of said lens assemblies being divided into an intermediate section extending across the lens at a substantially middle level as viewed in a vertical direction, an upper section lying above the intermediate section and a lower section lying below the intermediate section wherein the intermediate section presents a see-through clarity lower than those presented by the upper section and the lower section (Figure 9). A difficult viewing

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section 14 is shown in the various embodiments. When forming the forward-viewing section 7 and peripheral section 6 it is possible to form them by layering a layer of difficult viewing section 14 such as coloring 15, 16, patterning 19, graphic image, text 17, gradation 18, mesh shading 20 or the like (Column 7, 32-40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokota in view of Krupicka (U.S. 4,251,076). Yokota discloses the invention substantially as applied in claim 1 above. However, Yokota is missing a belt-like portion formed integrally with the eye-cups. Krupicka discloses a pair of swimming goggles comprising a pair of lenses 16 and 18 that are connected together by a nose engaging bridge 12. The lens assemblies have a transverse direction horizontally extending across said head and longitudinal direction vertically extending orthogonally to the transverse direction. Each lens has an intermediate section 22 that extends across the lens at a substantially middle level. The intermediate section is in the form of a bar 22, which forms a belt across the lenses. Krupicka does not explicitly state how the see-through clarity is specified, but the drawings indicate that the bar is a solid piece of

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material and therefore it would be inherent that the bar is at least opaque because it is used and seen as a single cross (Figures 1 and 3), consequently giving the intermediate section a total luminous transmittance of substantially 0%. An upper and lower section of the lenses are located above and below the intermediate section respectively. The upper and lower sections have a much higher see through clarity than the intermediate section. The intermediate section has a width of .25 inches (Column 2, 54-57), which is equivalent to 6.35mm. Yokota and Krupicka both disclose forms of eyewear. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Krupicka to modify Yokota in order to provide eyewear that can provide alignment to the wearer during sporting activities.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins
Patent Examiner
Art Unit 3765
February 8, 2007

AJT



GARY L. WELCH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700